NO. 47413-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

CHASE S. POLEDNA,

Appellant.

BRIEF OF APPELLANT

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Assignment of Error

1. The trial court denied the defendant his state and federal constitution right to notice when it entered judgment against him in count I for a class "B" felony because the state only charged him with a gross misdemeanor.

2. The trial court denied the defendant due process when it instructed the jury on accomplice liability because the record contains no evidence that the defendant acted as an accomplice to Christy Curry's actions.

Issues Pertaining to Assignment of Error

1. In a case in which the state ostensibly charges first degree theft but fails to allege the amount stolen, upon conviction and consistent with the defendant's rights to notice under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment, must the court only enter judgement against the defendant for third degree theft?

2. Does a trial court deny a defendant due process under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, if it instructs a jury on accomplice liability when the record is devoid of any evidence that the defendant acted as an accomplice to another person?

STATEMENT OF THE CASE

Factual History

The defendant Chase S. Poledna and Christy Curry have three children together: McKayla Curry, Jaden Poledna and Thomas Poledna. RP 9-11.[1] On November 29, 2012, the defendant filed an Application for Benefits with the Washington State Department of Social and Health Services (DSHS) seeking welfare in the form of cash, medical, medical bill, and food benefits for himself, Christy and their three children. Trial Exhibit No. 5. DSHS later granted the request and provided the welfare requested. RP 73-74, 82-83, 89-90.

During May of 2013 the defendant called his mother in Grants Pass, Oregon, and arranged for his three children to travel to Grants Pass to spend some time with her. RP 9-11, 16. They arrived on May 28, 2013. RP 9-11. Initially the visit was only planned for a while. RP 16. However, by the beginning of the school year the defendant agreed to let the children live with his mother and go to school in Grants Pass. RP 13-14. The three children resided with their grandmother thereafter and have attended school in Grants Pass since September of 2013. *Id.* The defendant did not inform DSHS of

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[1]The record on appeal includes two volumes of verbatim reports. "RP" refers to the transcripts of the jury trial held on March 12 and March 13, 2015. "RP [date #]" refers to the transcripts of the hearings held on the dates indicated.

his children's change of residence. RP 42, 71-72. Neither did he send any money to his mother to help support them. RP 16.

The defendant's mother lives on Social Security and a disability income and in March of 2014, she applied with the State of Oregon and started receiving welfare benefits for the three children. RP 13-14. Eventually an investigator for DSHS reviewed a multi-state welfare benefits database and learned that both Washington and Oregon were providing welfare benefits for the defendant's three children, who had been living in Oregon since the end of May, 2013. RP 87-95, 114-120.

The DSHS investigator also determined that on August 22, 2013, Christy Curry had filed an application for benefits with DSHS requesting welfare in the form of cash, medical, children's medical and food benefits for herself, the defendant and their three children, whom she claimed were all members of her household. Trial Exhibit No. 6. She listed an address in Elma, Washington as the family's residence. *Id.* In addition, the investigator also determined that on August 22, 2013, the defendant had filed an electronic application for benefits with DSHS requesting welfare in the form of cash and medical benefits of himself, Christy Curry, and their three children, who he claimed were all members of his household. Trial Exhibit No. 7. He listed the same address in Elma for the family residence as did Christy Curry in her application of the same date. *Id.*

Procedural History

By information filed December 3, 2014, and later amended on February 23, 2015, the Grays Harbor County Prosecutor charged the defendant Chase S. Poledna with two offenses: (1) "Theft in the First Degree - Welfare Fraud" under RCW 74.08.331(1), RCW 9A.56.030(1) and RCW 9A.56.020, and (2) "False Verification of Welfare Form" under RCW 74.08.055. CP 1-3, 16-17. The amended information alleged the following on Count I:

COUNT 1.

> That the said defendant, Chase S. Poledna, in Grays Harbor County, Washington, on or between June 10, 2013 and December 31, 2013, did obtain public assistance to which the defendant was not entitled, or greater public assistance than to which the defendant was justly entitled, by means of a Willful failure to reveal any material fact, condition, or circumstance affecting eligibility or need for assistance, or willful failure to promptly notify the couinty office of public assistance in writing of a change in status or circumstance affecting eligibility or need for public assistance, or other fraudulent device;
>
> CONTRARY TO Rcw 74.08.331(1), RCW 9A.56.030(1) AND rcw 9A.56.020 AND AGAINST THE PEACE AND DIGNITY OF THE State of Washington.

CP 16 (capitalization and emphasis in original).

The case later came on for trial with the state calling the defendant's mother, school officials from Grants Pass Oregon, DSHS case workers and the DSHS investigators who had reviewed the defendant's case. RP 9, 17, 22, 45, 63, 78, 87, 95 and 114. These witnesses testified to the facts

contained in the preceding factual history. *See* Factual History. Following the close of the state's case the defense rested without calling any witnesses. CP 150. The court then instructed the jury on both counts with the defense objecting to the court's decision to given an accomplice instruction, and taking exception to the court's refusal to give the defendant's proposed lesser included instructions of third degree theft and false swearing. RP 127-128, 130-133.

The court also denied a defense motion to dismiss for want of substantial evidence. RP 139. Following instructions, the parties presented their closing arguments. RP 141-167. The court then denied a defense motion for a mistrial based upon the prosecutor's argument during closing that "we all know not to stab people, basically because its wrong." RP 167-168. At this point the jury retired for deliberation and eventually returned verdicts of guilty on both counts. CP 72-73; RP 168-173.. A little over two weeks later the court sentenced the defendant within the standard range, after which the defendant filed timely notice of appeal. CP 85-93, 94.

ARGUMENT

I. THE TRIAL COURT DENIED THE DEFENDANT HIS STATE AND FEDERAL CONSTITUTION RIGHT TO NOTICE WHEN IT ENTERED JUDGMENT AGAINST HIM IN COUNT I FOR A CLASS "B" FELONY BECAUSE THE STATE ONLY CHARGED HIM WITH A GROSS MISDEMEANOR.

Under Washington Constitution, Article 1, § 22 and United States Constitution, Sixth Amendment, a defendant may only be convicted of the crime charged. *State v. Kjorsvik*, 117 Wn.2d 93, 97, 812 P.2d 86 (1991). The only exception is for lesser included offenses. *State v. Pelkey*, 109 Wn.2d 484, 745 P.2d 854 (1987); *State v. Taylor*, 90 WnApp. 312, 950 P.2d 526 (1998). As this Division of the Court of Appeals has previously stated:

> Generally, the State must give the accused notice of the charge he will face at trial. An accused cannot be convicted of an uncharged or inadequately charged offense. A jury may, however, find an accused guilty of a lesser degree offense when the State charges the accused with a higher degree of a multiple degree offense. In such instances, the State does not have to notify the defendant that he may be convicted of the lesser included offense.

State v. Taylor, 90 Wn.App. at 322 (citations omitted).

This constitutional principle is also adopted in by statute in RCW 10.61.010, which states as follows:

> Upon the trial of an indictment or information, the defendant may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime. Whenever the jury shall find a verdict of guilty against a person so charged, they shall in their verdict specify the degree or attempt of which the accused is guilty.

RCW 10.61.010.

In the case at bar, the state charged and convicted the defendant in Count I of "Theft in the First Degree - Welfare Fraud" under RCW 74.08.331(1), RCW 9A.56.030(1) and RCW 9A.56.020. The amended information alleged this offense as follows:

> That the said defendant, Chase S. Poledna, in Grays Harbor County, Washington, on or between June 10, 2013 and December 31, 2013, did obtain public assistance to which the defendant was not entitled, or greater public assistance than to which the defendant was justly entitled, by means of a Willful failure to reveal any material fact, condition, or circumstance affecting eligibility or need for assistance, or willful failure to promptly notify the couinty office of public assistance in writing of a change in status or circumstance affecting eligibility or need for public assistance, or other fraudulent device;
>
> CONTRARY TO RCW 74.08.331(1), RCW 9A.56.030(1) AND rcw 9A.56.020 AND AGAINST THE PEACE AND DIGNITY OF THE State of Washington.

CP 16 (capitalization and emphasis in original).

The problem with this information under the constitutional and statutory principles just discussed is that while the information claims to charge the defendant with first degree theft by welfare fraud, it in fact only charges the defendant with third degree theft by welfare fraud. The following sets out this argument.

In this case the state charged the defendant under RCW 74.08.331(1). This statute states:

> (1) Any person who by means of a willfully false statement, or

> representation, or impersonation, or a willful failure to reveal any material fact, condition, or circumstance affecting eligibility or need for assistance, including medical care, surplus commodities, and food stamps or food stamp benefits transferred electronically, as required by law, or a willful failure to promptly notify the county office in writing as required by law or any change in status in respect to resources, or income, or need, or family composition, money contribution and other support, from whatever source derived, including unemployment insurance, or any other change in circumstances affecting the person's eligibility or need for assistance, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain any public assistance to which the person is not entitled or greater public assistance than that to which he or she is justly entitled is guilty of theft in the first degree under RCW 9A.56.030 and upon conviction thereof shall be punished by imprisonment in a state correctional facility for not more than fifteen years.

RCW 74.08.331.

The legislature originally adopted this statute in 1965. *See* Laws of 1965, Ex. S. Chapter 34, Section 1. Under the original version the phrase "is guilty of theft in the first degree under RCW 9A.56.030" was written "shall be guilty of grand larceny." When the legislature revised the majority of Washington criminal statutes in 1975, it failed to amend or modify numerous criminal statutes outside Title 9A. These statutes continued to define certain offenses as "larcenies." Welfare fraud under RCW 74.08.331 was one of these offenses. However, the legislature did concurrently adopte RCW 9A.56.100, which states that "[a]ll offenses defined as larcenies outside of this title shall be treated as thefts as provided in this title." Thus, although the welfare fraud statute did originally use the term "larceny," under RCW

9A.56.100, the term then became synonymous with term "theft." In 2003 the legislature finally amended the welfare fraud statute to specifically change the reference from "larceny" to "theft." *See* Laws of 2003, Chapter 53, Section 368. However, this change did not substantively change the law because RCW 9A.56.100 had previously clarified that the words "theft" and "larceny" were synonymous.

By contrast, just precisely what the legislature meant substantively in RCW 9A.56.100 when it stated that "all offenses defined as larcenies outside of this title shall be treated as thefts" has led to a great deal of confusion. As the Washington Supreme Court noted in *State v. Campbell*, 125 Wn.2d 797, 802, 888 P.2d 1185 (1995), "[a]s the history of judicial interpretation of this sentence shows, the precise legislative intent behind the phrase 'shall be treated as thefts' is not easily discerned." On the one hand, the defense and some courts have interpreted this statute to mean (1) that the *mens rea* element of "intent to deprive" from the theft statutes was now grafted into the welfare fraud statute, and (2) that the amount illegally obtained which had to be included in an information charging a theft also had to be pled and proven as an element of the offense welfare fraud. On the other hand, the prosecution and some courts argued that the *mens rea* element for welfare fraud remained as stated under the original statute and that there was only one offense of welfare fraud regardless of the amount illegally

obtained.

Eventually the Washington Supreme Court addressed these two issues in *State v. Delcambre*, 116 Wn.2d 444, 805 P.2d 233 (1991). In that case the court held that RCW 9A.56.100 did not have the effect of grafting the theft "intent to deprive" *mens rea* element into the welfare fraud statute. The court stated the following on this issue:

> Welfare fraud is a substantive crime separate from the types of theft defined in RCW 9A.56.020. It contains its own scienter element and means of committing the offense. Only its penalty is determined by reference to the theft provisions. It is not subsumed totally under the crime of theft, otherwise RCW 74.08.331 has no purpose.

State v. Delcambre, 116 Wn. 2d at 451.

By contrast, the court held on the second issue that since welfare fraud was now to be treated as a "theft" under Title 9A, it did now have three separate degrees depending upon the amount of benefits illegally obtained. The court stated the following on this second issue:

> RCW 9A.56.100 provides that all offenses defined as larcenies elsewhere will be treated as thefts under RCW Title 9A. This provision impliedly repealed the portion of RCW 74.08.331 making welfare fraud grand larceny and providing for a specific punishment. *State v. Sass*, 94 Wn.2d 721, 726, 620 P.2d 79 (1980). The crime of welfare fraud is now a theft, the degree of which depends upon the monetary amount involved. *Sass*, 94 Wn.2d at 725, 620 P.2d 79.

State v. Delcambre, 116 Wn. 2d at 446.

In *State v. Campbell, supra*, the court subsequently addressed the related issue whether or not an information charging welfare fraud was

defective if it failed to allege the amount taken. The court held that it was defective. The court stated the following on this issue:

> This result follows also from the general purpose behind the essential elements rule. "It is sufficient to charge the crime in the language of the statute if the statute defines the crime sufficiently to apprise an accused person with reasonable certainty of the nature of the accusation." *Delcambre*, 116 Wn.2d at 450–51, 805 P.2d 233. Since RCW 9A.56.100 grafted the degrees of theft onto the elements stated in the language of the welfare fraud statute, an accused person is sufficiently apprised of the nature of the accusation only if an amount of overpayment and corresponding degree is alleged.

State v. Campbell, 125 Wn. 2d at 804.

Although the decision in *State v. Campbell* would appear to indicate that an information charging welfare fraud that does not specify the amount of benefits illegally obtained fails to allege an offense at all, reference to the subsequent decision in *State v. Tinker*, 155 Wn.2d 219, 222, 118 P.3d 885 (2005), indicates otherwise.

In *State v. Tinker*, *supra*, decided after *Campbell*, the court addressed an argument that an information charging third degree theft under Title 9A was defective because it failed to specify the value of the property taken. In that case, the court held that the amount stolen was not an essential element to the crime of third degree theft despite the language in the statute, because it was the lowest level of theft and the amount of the property taken was not necessary to establish the illegality of the behavior because the property's value only served to distinguish the various degrees of theft. The court held

as follows on this issue:

> Given that all items and services have presumed value, and thus there can be no defense that items were valueless, the third degree theft statute covers all items with a value less than $250. Value is an essential element of higher degree theft statutes because the statutes themselves have a minimum value threshold: $250 dollars for second degree theft (RCW 9A.56.040) and $1,500 dollars for first degree theft (RCW 9A.56.030). The possibility that stolen property had value less than these thresholds makes value an essential element of these crimes, since the "specification is necessary to establish the very illegality of the behavior." *Johnson*, 119 Wash.2d at 147, 829 P.2d 1078. Since all items have some value under the statutory definition of value, which Tinker has not challenged, there is no threshold specification necessary to establish the very illegality of the behavior. The act of taking any item constitutes at least third degree theft.

State v. Tinker, 155 Wn.2d at 222.

In the case at bar the state charged the defendant by amended information with welfare fraud but did not specify the amount of benefits the defendant allegedly illegally obtained. As the court clarified in both *Delcambre* and *Campbell*, the amount taken is an essential element of the offense charged and must be included in order to sustain a conviction for either first degree theft by welfare fraud (a class B felony) or second degree theft by welfare fraud (a class C felony). Thus, the information in this case charged neither offense. However, as the decision in *Tinker* clarifies, an information charging third degree theft need not include an recitation of the value of the property taken because the amount of the property taken is not an essential element of the crime of third degree theft. Consequently, the

information in the case at bar did charge one offense: Third Degree Theft by Welfare Fraud, in spite of the title which claimed first degree theft.

As was stated above, under both Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment, a defendant man only be convicted and sentenced of the a charged offense or of a lesser included offense. Thus, in the case at bar, the trial court erred when it entered judgment against the defendant for the uncharged offense of first degree theft by welfare fraud (a class B felony) instead of the charged offense of third degree theft by welfare fraud (a gross misdemeanor). As a result, this court should vacate the defendant's conviction in Count I and remand for entry of judgment and resentencing on the gross misdemeanor of third degree theft by welfare fraud.

II. THE TRIAL COURT DENIED THE DEFENDANT DUE PROCESS WHEN IT INSTRUCTED THE JURY ON ACCOMPLICE LIABILITY BECAUSE THE RECORD CONTAINS NO EVIDENCE THAT THE DEFENDANT ACTED AS AN ACCOMPLICE TO CHRISTY CURRY'S ACTIONS.

While due process does not guarantee every person a perfect trial, both our state and federal constitutions do guarantee all defendants a fair trial. *State v. Swenson*, 62 Wn.2d 259, 382 P.2d 614 (1963); *Bruton v. United States*, 391 U.S. 123, 20 L.Ed.2d 476, 88 S.Ct. 1620 (1968). As part of this right to a fair trial, due process also guarantees that a defendant charged with a crime will be allowed to argue his or her theory of the case without hindrance from instructions that misstate the applicable law. *State v. Irons*, 101 Wn.App. 544, 549, 4 P.3d 174 (2000).

For example in *State v. Cronin*, 142 Wn.2d 568, 579, 14 P.3d 752 (2000), the defendants from separate trials appealed their convictions (one for first degree assault and one for first degree murder) arguing that the trial court had erred when it gave a jury instruction on accomplice liability that allowed the jury to find that the defendants were guilty as accomplices if they knew that their actions or words would promote the commission of "a" crime as opposed to knowledge that their actions or words would promote the commission of the "the" crime that the principle committed. Relying upon its decision in *State v. Roberts*, 142 Wn.2d 471, 14 P.3d 713 (2000), the court held this instruction to be error because the accomplice liability statute

required that the accomplice have knowledge that his or her actions will promote the commission of the crime with which the defendant is charged as an accomplice.

Under RCW 9A.08.030(3) the legislature has defined the term "accomplice" as follows:

> (3) A person is an accomplice of another person in the commission of a crime if:
>
> (a) With knowledge that it will promote or facilitate the commission of the crime, he or she:
>
> (i) Solicits, commands, encourages, or requests such other person to commit it; or
>
> (ii) Aids or agrees to aid such other person in planning or committing it; or
>
> (b) His or her conduct is expressly declared by law to establish his or her complicity.

RCW 9A.08.020(3).

Under this statute, the defendant must take some affirmative action in promoting the offense; mere presence, even it that presence "bolsters" or "gives support" to the perpetrator, does not constitute action sufficient to impose accomplice liability. *In re Welfare of Wilson*, 91 Wn.2d 487, 491-92, 588 P.2d 1161 (1979) (juvenile's presence, knowledge of theft and personal acquaintance with active participants was insufficient to constitute abetting crime of reckless endangerment without some showing of intent to encourage

criminal conduct). In addition, substantial evidence, whether on the issue of criminal liability as a principal or an accomplice, must be based upon more that mere speculation, surmise and conjecture. *State v. Uglem*, 68 Wn.2d 428, 413 P.2d 643 (1966).

For example, in *State v. Asaeli*, 150 Wn.App. 543, 208 P.3d 1136 (2009), a defendant convicted of second degree murder as an accomplice appealed his conviction, arguing that the evidence only showed mere presence and was insufficient to prove accomplice liability. The facts of this case were as follows. In the early morning hours of October 30, 2004, two groups of young people, most of Samoan descent, gathered at Thea Foss Park in Tacoma after the bar at which many of them were drinking closed. This park, which is in the Dock Street area of Tacoma's downtown waterfront, was a routine gathering place for young person's of Samoan descent. One of the groups at the park included Faalata Fola, and his cousin James Fola, who had arrived in a green Mercury driven by Tailulu Gago. Breanne Ramaley, Faalata Fola's girlfriend, was also present and had arrived separately with other friends in her red Nissan. Benjamin Asaeli was at the park, having driven there with his girlfriend Rosette Flores in her white Chevrolet Lumina. The defendant Darius Vaielua was present, having arrived driving his girlfriend's Ford Explorer. His girlfriend and Eroni Williams were passengers in that vehicle.

Once at the park, several persons, including the defendant DariusVaielua, walked around and asked people if Faalata Fola was present. After a short time, Eroni Williams located Faalata Fola sitting in the driver's seat of the Nissan, which was parked between Gago's Mercury and the Lumina driven by the defendant Darius Asaeli. At this point, Eroni Williams challenged Faalata Fola to a fight, but moved back, claiming that Fola had a gun. As he stepped back, Benjamin Asaeli immediately stepped forward and fatally shot Fola multiple times as Fola remained seated in the Nissan. Benjamin Asaeli later confessed to shooting Fola, but claimed that he had acted in self defense after Fola pulled a gun, shot at Benjamin Williams, and then pointed the gun at him.

The state charged Benjamin Asaeli with first degree murder. The state also charged Benjamin Williams and the defendant Darius Vaielua with murder under the theory that they acted as accomplices to Benjamin Asaeli when he shot Fola. Following a lengthy joint trial, all three defendants were convicted. They appealed, urging a number of common arguments on appeal. The defendant Darius Vaielua also argued that the evidence presented at trial only showed mere presence on his behalf and was not legally sufficient to sustain a conviction as an accomplice. In addressing this latter claim, the court summarized the evidence against the defendant as follows:

The trial testimony showed that (1) Asaeli, Asi, and Williams

> witnessed Fola shoot at a car with Asian men in it at Thea Foss Park a week before Asaeli shot Fola but that Vaielua was not present at the time; (2) a week later, Vaielua was at Papaya's Bar at the same time as Williams and Asaeli; (3) Vaielua spoke to Williams and Asaeli either at the bar or as they were all leaving the bar at closing time; (4) Asaeli did not ask Flores if she wanted to go to the waterfront until after speaking to the others as they were leaving the bar; (5) Vaielua did not normally go to the waterfront after the bars closed when he was with Ishmail; (6) after leaving the bar, talking to the others, and dropping Ishmail off, Vaielua drove the Explorer to Thea's Park at the same time Asaeli, Van Camp, and Asi drove to the park; (7) the three cars arrived at approximately the same time; (8) when Vaielua arrived, he had four passengers with him, including Williams; (9) before the shooting, Vaielua and the others exited the Explorer and Vaielua spoke and motioned to the people in the Explorer for several minutes; (10) also before the shooting, some of those who arrived with Vaielua spoke to Asaeli; (11) immediately before the shooting, Vaielua approached James, who he knew from prior peaceful encounters; and (12) after greeting James, Vaielua asked where "Blacc" was and then stood with James (with a car between them and Ramaley's car) until the shooting. Importantly, the evidence did not show what was said during any conversations Vaielua may have had or overheard that evening nor was there any evidence that any of these conversations related in any way to a plan to shoot or assault Fola.

State v. Asaeli, 150 Wn.App. at 568-569 (footnote omitted).

With this recitation of the facts in mind, the court reviewed the law on accomplice liability, and concluded that the facts were legally insufficient to support a conviction. The court held:

> To prove Vaielua was an accomplice to Fola's murder, the State had to prove beyond a reasonable doubt that Vaielua (1) knew his actions would promote or facilitate this crime, (2) was present and ready to assist in some manner, and (3) was not merely present at the scene with some knowledge of potential criminal activity. RCW 9A.08.020(3). Taking the evidence in the light most favorable to the State, we conclude that, although there was evidence that Vaielua was

> present at the park, that he drove Williams and others to the park, and that he was aware that some members of the group he was with were was trying to locate Fola, the evidence failed to show that Vaielua was present at the scene with more than mere knowledge of some potential interaction with Fola.
>
> . . .
>
> At best, this evidence is sufficient to suggest that Vaielua and the others agreed to meet at the park after the bar closed and that Vaielua may have known that someone from his group was trying to locate Fola. But the record contains no evidence, direct or indirect, establishing that Vaielua was aware of any plan, by Asaeli, Williams, or anyone else, to assault or shoot Fola.

State v. Asaeli, 150 Wn.App. at 569.

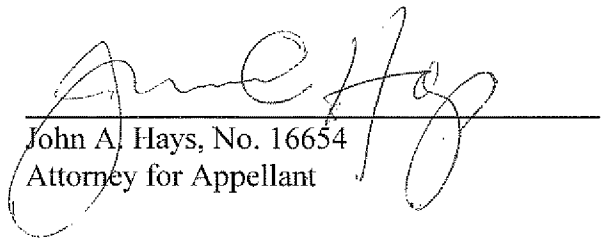
The evidence presented in the case at bar is even less persuasive on the claim of accomplice liability than the evidence presented in *Asaeli*. In the case at bar the state's evidence only proved that the defendant at some point was living with Christy Curry and that they had children together. This evidence provided only a suspicion that the defendant in some way helped or encouraged Christy Curry when she fraudulently filled out an application for benefits. However, this suspicion is insufficient under the law of accomplice liability to entitle the state to an instruction on that claim. Thus, the trial court erred when it instructed the jury on accomplice liability. As a result, this court should reverse the defendant's convictions and remand for new trial.

CONCLUSION

The trial court erred when it entered judgment against the defendant and sentenced him for first degree theft by welfare fraud because the state only charged him with third degree theft by welfare fraud. As a result, this court should vacate the defendant's conviction and sentence and remand for entry of judgment on a charge of third degree theft by welfare fraud. In addition, this court should vacate the defendant's conviction for false verification and remand for a new trial on that charge based upon the trial court's erroneous use of an accomplice liability instruction.

DATED this 31st day of August, 2015.

Respectfully submitted,



John A. Hays, No. 16654
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APPENDIX

WASHINGTON CONSTITUTION
ARTICLE 1, § 3

No person shall be deprived of life, liberty, or property, without due process of law.

WASHINGTON CONSTITUTION
ARTICLE 1, § 22

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station of depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

UNITED STATES CONSTITUTION, SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

. . .

RCW 9A.08.020
Liability for conduct of another – Complicity

(1) A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable.

(2) A person is legally accountable for the conduct of another person when:

(a) Acting with the kind of culpability that is sufficient for the commission of the crime, he or she causes an innocent or irresponsible person to engage in such conduct; or

(b) He or she is made accountable for the conduct of such other person by this title or by the law defining the crime; or

(c) He or she is an accomplice of such other person in the commission of the crime.

(3) A person is an accomplice of another person in the commission of a crime if:

(a) With knowledge that it will promote or facilitate the commission of the crime, he or she:

(i) Solicits, commands, encourages, or requests such other person to commit it; or

(ii) Aids or agrees to aid such other person in planning or committing it; or

(b) His or her conduct is expressly declared by law to establish his or her complicity.

(4) A person who is legally incapable of committing a particular crime himself or herself may be guilty thereof if it is committed by the conduct of another person for which he or she is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his or her incapacity.

(5) Unless otherwise provided by this title or by the law defining the

crime, a person is not an accomplice in a crime committed by another person if:

(a) He or she is a victim of that crime; or

(b) He or she terminates his or her complicity prior to the commission of the crime, and either gives timely warning to the law enforcement authorities or otherwise makes a good faith effort to prevent the commission of the crime.

(6) A person legally accountable for the conduct of another person may be convicted on proof of the commission of the crime and of his or her complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted or has been convicted of a different crime or degree of crime or has an immunity to prosecution or conviction or has been acquitted.

RCW 10.61.010
Conviction of Lesser Crime

Upon the trial of an indictment or information, the defendant may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime. Whenever the jury shall find a verdict of guilty against a person so charged, they shall in their verdict specify the degree or attempt of which the accused is guilty.

RCW 74.08.055
Verification of applications — Electronic Applications — Penalty

(1) Each applicant for or recipient of public assistance shall complete and sign a physical application or, if available, electronic application for assistance which shall contain or be verified by a written declaration that it is signed under the penalties of perjury. The department may make electronic applications available. The secretary, by rule and regulation, may require that any other forms filled out by applicants or recipients of public assistance shall contain or be verified by a written declaration that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each applicant shall be so informed at the time of the signing. The application and signature verification shall be in accordance with federal requirements for that program.

(2) Any applicant for or recipient of public assistance who willfully makes and signs any application, statement, other paper, or electronic record which contains or is verified by a written declaration that it is made under the penalties of perjury and which he or she does not believe to be true and correct as to every material matter is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) As used in this section:

(a) "Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

(b) "Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(c) "Sign" includes signing by physical signature, if available, or electronic signature. An application must contain a signature in either physical or, if available, electronic form.

RCW 74.08.31
Unlawful Practices - Obtaining Assistance
Disposal of realty - Penalties

(1) Any person who by means of a willfully false statement, or representation, or impersonation, or a willful failure to reveal any material fact, condition, or circumstance affecting eligibility or need for assistance, including medical care, surplus commodities, and food stamps or food stamp benefits transferred electronically, as required by law, or a willful failure to promptly notify the county office in writing as required by law or any change in status in respect to resources, or income, or need, or family composition, money contribution and other support, from whatever source derived, including unemployment insurance, or any other change in circumstances affecting the person's eligibility or need for assistance, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain any public assistance to which the person is not entitled or greater public assistance than that to which he or she is justly entitled is guilty of theft in the first degree under RCW 9A.56.030 and upon conviction thereof shall be punished by imprisonment in a state correctional facility for not more than fifteen years.

(2) Any person who by means of a willfully false statement or representation or by impersonation or other fraudulent device aids or abets in buying, selling, or in any other way disposing of the real property of a recipient of public assistance without the consent of the secretary is guilty of a gross misdemeanor and upon conviction thereof shall be punished by imprisonment for up to three hundred sixty-four days in the county jail or a fine of not to exceed one thousand dollars or by both.

COURT OF APPEALS OF WASHINGTON, DIVISION II

STATE OF WASHINGTON, **Respondent,** **vs.** **CHASE S. POLEDNA,** **Appellant.**	**NO. 47413-1-II** **AFFIRMATION OF SERVICE**

The under signed states the following under penalty of perjury under the laws of Washington State. On the date below, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Ms Katherine Svoboda
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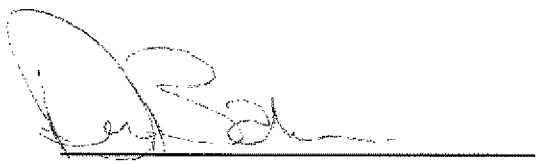
Dated this 31st day of August, 2015, at Longview, WA.



Donna Baker

HAYS LAW OFFICE

August 31, 2015 - 11:54 AM

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